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SUBJECT: RIGHTS FOR SEXUAL MINORITIES IN INDIA MAY GROW

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11. (U) Summary. India's lesbian, gay, bisexual, and transvestite (LGBT) community is becoming increasingly active, while Indian society appears to be slowly accepting equal rights for the community. The global LGBT Month saw marches in major Indian cities, including New Delhi, Chennai, Bangalore, and Kolkata. Meanwhile, the Government of India is considering whether to amend and/or repeal Section 377 of the Indian Penal Code, which criminalizes sexual acts "against the order of nature," including sex between individuals of the same gender. According to the media, the Home Minister plans to meet soon with his counterparts at the Law and Health Ministries to discuss the law. Amending or eliminating Section 377, a legacy of the British Raj, would bring India in sync with other liberal democracies. End Summary.

LGBT Community Coming of Age but...

12. (U) The Indian Lesbian, Gay, Bisexual, and Transgender (LGBT) community is slowly coming of age, especially in India's cities. Activists raised awareness during the worldwide Gay Pride Month in June, culminating in parades on June 28. Delhi held its second annual march which saw a larger number of people and much greater media coverage of the event than in the previous year. The Delhi march included parents, friends, colleagues, and siblings of LGBT people. In Kolkata, approximately 150 people participated in the gay pride parade organized by several NGOs. The parade was part of a series of events there to promote LGBT rights, including a panel discussion, launch of a newsletter, and artistic events. In Orissa's small state capital of Bhubaneswar, about 150 people from ten districts attended the first "Rainbow Pride Walk." Chennai held its first parade--with an estimated 300 marchers and several thousand spectators--on its famous Marina Beach. The police managed the crowd respectfully and kept things orderly. Bangalore's parade reportedly had as many as 600 marchers. (Note: The Consul General in Chennai hosted a reception for more than 70 people marking Pride Month. Chennai's Public Affairs Section launched a series of Oscar-winning films at a local film society by screening "Milk," about slain gay rights leader Harvey Milk, and hosted a display on U.S. LGBT history. End Note.) News reports on Pride Month events were generally positive, accurate, and gave high prominence to the activism.

13. (U) According to some activists, there has been a growing acceptance of sexual minorities in India in the last two decades. A recent survey of eight Indian cities showed that people in the 18-30 year-old age group are more at ease with homosexuality than people

in the 31-45 year-old age group. A gay rights activist from the LGBT group Gay Bombay confirms reports of marriage ceremonies between same sex couples every week, throughout India. According to activist Ashok Row Kavi, some Hindu priests will "forget about everything if you show them a few bucks."

Many Still in the Closet

14. (SBU) Poloff spoke with Maya Shanker and Betu Singh, two female activists of Sangini Trust, an NGO that focuses on helping women deal with issues regarding their sexuality and sexual rights. The two activists described the difficulties LGBT Indians, especially women, continue to face. According to one activist, the situation has improved from past years as more young people--especially urban youth--feel comfortable in coming out about their sexual preferences. Sangini Trust has avoided police harassment by maintaining a low-profile. Police harassment of gay men and the transgender community continues, according to Singh. The NGO recently provided shelter and helped find jobs for two young women from a village near Nagpur, who fled the village when they were thrown out by their families after getting married to each other. Both women said government officials who are gay are still reticent to come out and support the gay rights movement. They also noted their struggle to persuade the women's movement to recognize the rights of lesbians, recalling that lesbian groups were not allowed to participate in Women's Month events.

Section 377: A British Legacy

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15. (U) India is one of the few democratic nations that still criminalizes homosexual activity. Section 377 of the Indian Penal Code (IPC) punishes "carnal intercourse against the order of nature." This includes private consensual sexual intercourse between adults of the same gender. Lord Thomas Macauley introduced the law in 1860 and its punishment includes either imprisonment of ten years, or life and a fine. Technically, Section 377 does not criminalize gays as a class, but targets only sexual acts. However, the gay community bears the brunt of the law since the proscribed sexual acts are commonly but mistakenly associated with the gay community.

16. (U) Many Indian activists believe the British brought their own laws and prejudices when they took control of the Indian subcontinent. According to them, Section 377 originated in seventeenth century Britain and was introduced into secular criminal codes from ecclesiastical statutes. Before the British arrival, India had no personal laws on sexual orientation. Activist Ashok Row Kavi states, "The personal in India had remained personal till the British invented both the closet and the law to keep you in it."

(Note: The British repealed the law in the United Kingdom in 1967, although similar laws continued in their former colonies. End Note.)

Ancient India: To Each His Own

17. (U) According to some scholars, Indian jurisprudence had no concept of something being "against the order of nature." Section 377's proscription was a Western concept which remained after the British quit the subcontinent in 1947. According to the Naz Foundation, an NGO that works on HIV/AIDS issues, India historically was relatively accommodating of homosexuals. While Section 377's penalty goes up to a life sentence, there is nothing comparable to it in the Manusmriti, the most popular book of Hindu law of ancient and medieval India. Another indicator of India's liberal Hindu heritage, the famous Kama Sutra, contains a chapter that details sex between the individuals of the same gender and says "it is to be engaged in and enjoyed for its own sake as one of the arts."

New Government Plans a Rethink?

18. (U) The GOI is considering repealing and/or amending Section 377.

According to a top government official, "this section is an absurdity in today's world. The government will certainly move to repeal it." The previous government was unable to evolve a consensus following stiff resistance from the former Home Minister and some sections of the coalition government which opposed the lifting the ban on the grounds of religion. The new Home Ministry, under the continuing leadership of P. Chidambaram, appears to have changed its position. (Note: Chidambaram took over the Home Ministry after the November 2008 terrorist attacks on Mumbai. He was reappointed to this position when the new government was formed in May. End Note.) In early June, new Law Minister Veerappa Moily raised hopes among the gay rights community when he said he was in favor of reviewing some sections of the IPC, including Section 377. The third critical ministry, Health, has historically favored repealing Section 377, arguing that it would help to more easily spread awareness of HIV/AIDS among the gay community who often fear the police and go underground. According to the media, Home Minister Chidambaram will chair a meeting soon with his Law and Health Ministry counterparts, and also solicit input from state governments.

¶9. (U) The government's new consensus is expected to impact a petition filed by the Naz Foundation that is pending before the Delhi High Court in which the court is reviewing a challenge to arrests under Section 377 (Reftel). The Law Ministry at the time supported the Home Ministry and made it clear to the court that the GOI did not favor any change in the existing law. Although a court verdict is expected soon, the new government may choose to notify the High Court that it has changed its position. However, the government may not have an easy time altering its stance. Talk of repealing or amending the law has already garnered opposition from religious conservatives, causing the government to backpedal. On June 29, Law Minister Moily stated that "the government cannot take a decision in a hurry," and Health Minister Ghulam Nabi Azad said "there should be more debate---public debate, Parliament debate." A trusted contact, Ravi Nair, of the South Asia Human Rights

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Documentation Centre believes the LGBT community should not use high-profile public events to effect change in the law, since Indian society is still very conservative and public activism is only likely to delay any change.

Comment

¶10. (SBU) The new government's consideration of amending or repealing Section 377 may be another signal of the government's confidence and intention to reach for seemingly low-hanging fruit to obtain some early victories. Decriminalizing sex between members of the same gender in India would not only bring it in line with the majority of the world's nations, but would also reaffirm the world's largest democracy as a liberal one. But in the face of upcoming assembly elections in Maharashtra, Jharkhand, and Haryana, the government may find fighting for equal rights for the LGBT community a bridge too far for fear of alienating conservative Hindus, Muslims, and Christians.